

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

Case No.	SACV 15-0935 AG (ASx)	Date	November 12, 2015
Title	MARSHALL SANDERS et al. v. BANK OF AMERICA, N.A. et al.		

Present: The Honorable	ANDREW J. GUILFORD
Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter / Recorder
Tape No.	

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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Proceedings: **[IN CHAMBERS] ORDER DISCHARGING OSC, GRANTING MOTIONS TO DISMISS, GRANTING LEAVE TO AMEND, AND DENYING MOTION TO STRIKE**

Plaintiffs Marshall S. Sanders and Lydia O. Sanders (“Plaintiffs”) sued Defendants Select Portfolio Servicing; National Default Servicing Corporation; Wells Fargo, N.A. (collectively, “Wells Fargo”); and Bank of America, N.A. (“BofA”). (*See* First Amended Complaint (“FAC”), Dkt. No. 24.) Wells Fargo and BofA each filed a Motion to Dismiss the FAC (collectively, “Motions to Dismiss”) along with supporting Requests for Judicial Notice (collectively, “RJNs”). (Dkt. Nos. 39, 40 (BofA), 41, 42 (Wells Fargo).) The Motions to Dismiss were set for hearing on Monday, November 9, at 10:00 a.m.

Plaintiffs’ prosecution of this matter has been characterized by serious substantive and procedural problems. The Court discussed many of these issues in its November 5, 2015 Order. In that Order, the Court ordered Plaintiffs to appear on November 9 at 10:00 a.m. and show cause why this case should not be dismissed without leave to amend and for Plaintiffs’ failure to prosecute, appear, follow court orders, and follow the Local Rules (“OSC”). (Dkt. No. 51.) Among other things, the Court admonished Plaintiffs for their extraordinarily late filing of opposition to the Motions to Dismiss and their subsequent filing of an unauthorized sur-reply just two business days before the hearing on the Motions to Dismiss. (*Id.* at 2–3.)

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The Sanders responded to the November 5 Order by manually filing a “Motion to Strike Defendants’ Motions to Dismiss” (“Motion to Strike”) on Friday, November 6, 2015, at 3:22 p.m. The Motion to Strike is untimely and improper.

For the reasons set forth in the Court’s November 5, 2015, Order and the reasons discussed on the record at the November 9, 2015, hearing on the Motions to Dismiss, the Court DISCHARGES the OSC, GRANTS the Motions to Dismiss, GRANTS Plaintiffs’ leave to file an amended complaint within 30 days of the November 9, 2015, hearing, and DENIES the RJNs. As the Court noted at the hearing on the Motions to Dismiss, the Court is unlikely to give Plaintiffs further leave to file an amended complaint. *See Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (citation omitted) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)) (“A district court may deny a plaintiff leave to amend if it determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency or if the plaintiff had several opportunities to amend its complaint and repeatedly failed to cure deficiencies.”); *Steckman v. Hart Brewing*, 143 F.3d 1293, 1298 (9th Cir. 1998) (holding that pleadings may be dismissed without leave to amend if amendment “would be an exercise in futility”).

The Court finds the Motion to Strike appropriate for resolution without oral argument or further briefing. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. The Court DENIES the Motion to Strike as untimely and improper.

Initials of
Preparer